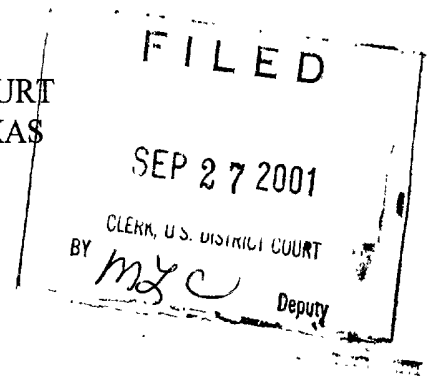


IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TEXAS  
AUSTIN DIVISION



WOMACK+HAMPTON ARCHITECTS,  
L.L.C.

Plaintiff,

VS.

METRIC HOLDINGS LTD.,  
PARTNERSHIP,  
CHILES ARCHITECTS, INC. AND  
TRAMMEL CROW RESIDENTIAL  
COMPANY

Defendants.

CIVIL ACTION NO.A 01CA 59 1 JN

**PLAINTIFF'S FIRST AMENDED COMPLAINT**

WOMACK+HAMPTON ARCHITECTS, L.L.C., Plaintiff, brings this action against  
METRIC HOLDINGS, LTD, CHILES ARCHITECTS, INC. and TRAMMEL CROW  
RESIDENTIAL COMPANY, Defendants, and alleges that:

**I.**  
**PARTIES**

1. Plaintiff WOMACK+HAMPTON ARCHITECTS, L.L.C. (hereinafter  
"WOMACK +HAMPTON") is a limited liability corporation organized under the laws of the  
State of Texas with its principal place of business in Dallas, Texas.

2. Defendant, METRIC HOLDINGS, LTD. PARTNERSHIP (hereinafter  
"METRIC") was and/or is a limited partnership organized under the laws of the State of Texas  
and may be served by serving its registered agent Corporation Service Company at 800 Brazos,  
Austin, Texas 78701.

3. Defendant CHILES ARCHITECTS, INC. (hereinafter “CHILES”) is a corporation organized under the laws of the State of Texas and may be served by serving its registered agent Gary R. Chiles at 2901 Bee Cave Road, Box H, Austin, Texas 78746.

4. Defendant, TRAMMEL CROW RESIDENTIAL COMPANY (hereinafter “TCR”) is a corporation organized under the laws of the State of Texas and may be served by serving its registered agent Corporation Service Company at 800 Brazos, Austin, Texas 78701.

## **II.**

### **JURISDICTION AND VENUE**

5. This is an action for copyright infringement arising under the Copyright Act of 1976, 17 U.S.C. § 101, *et seq.*, and specifically the Architectural Works Copyright Protection Act, as enacted on December 1, 1990.

6. This Court has jurisdiction over the copyright claims under 28 U.S.C. §§ 1331 and 1338(a).

7. Venue is proper in this district pursuant to 28 U.S.C. § 1400(a) and 1391(b) since at least one Defendant resides in this judicial district and this district is where a substantial portion of those acts giving rise to infringement occurred.

## **III.**

### **BACKGROUND**

8. WOMACK + HAMPTON is a corporation which has engaged and is engaged in the development of original architectural designs and plans for these designs for clients throughout the United States. WOMACK+HAMPTON is a successor in interest to Womack + Hampton Architectural Joint Venture, L.L.C., which in turn is a successor in interest to Womack+Hampton Architectural Joint Venture (“WHJV”).

9. In or about 1998, WHJV developed original architectural plans for an apartment complex to be built in Houston, Texas, under the name “Windfern.” In or about 1998, WHJV also developed original architectural plans for an apartment complex to be built in Dallas, Texas, under the name of “The Reserve at Cheyenne”(hereinafter collectively referred to as the “SUBJECT WORKS”).

10. In or about 1998, Plaintiff discovered that Defendants METRIC and TCR had commissioned Defendant CHILES to copy the SUBJECT WORKS, and from the SUBJECT WORKS, METRIC and TCR had commenced to build an apartment complex in Austin by the name of “Winfern.” Defendant CHILES’ acts in copying the SUBJECT WORKS and Defendants TCR and METRIC’s construction of the “Winfern” complex in Austin from the SUBJECT WORKS was without license or authorization from Plaintiff.

11. Plaintiff made demand upon Defendants to cease and desist their unauthorized copying and use of the SUBJECT WORKS, but Defendants refused to do so.

12. On information and belief, Defendants completed construction of the “Winfern”apartment complex in Austin in or about 1999.

13. In or about August, 2001, WOMACK + HAMPTON, as the assignee of all rights, title and interest in the copyrights in the SUBJECT WORKS, made application for registration with the United States Copyright Office. Registrations issued on these applications are attached herewith as Exhibits “A” and “B”.

#### IV. **COUNT ONE - COPYRIGHT INFRINGEMENT**

14. Plaintiff realleges each and every allegation set forth in paragraphs 1-14 above, and herein incorporates them by reference as if fully set forth at length.

15. Plaintiff did not authorize Defendants' copying of the SUBJECT WORKS and further did not authorize Defendants' use of the SUBJECT WORKS to construct the "Winfern" apartment complex in Austin, as described above.

16. Copying of the SUBJECT WORKS and construction of structures incorporating the SUBJECT WORKS is a direct infringement of Plaintiff's rights under 17 U.S.C. § 101 *et seq.*

**V.**  
**COUNT TWO - INDUCEMENT TO INFRINGEMENT**

17. Plaintiff realleges each and every allegation set forth in paragraphs 1-16 above, and herein incorporates them by reference as if fully set forth at length.

18. On information and belief, Defendants METRIC and TCR induced Defendant CHILES to copy the SUBJECT WORKS for use with construction of the infringing "Winfern" apartment complex in Austin.

19. METRIC and TCR's acts as described above constitute inducement of copyright infringement.

**VI.**  
**RELIEF**

20. Plaintiff is entitled to recover from Defendants its actual damages, including attorneys' fees, sustained as a result of Defendants' infringement. Plaintiff is also entitled to recover any gains, profits, and advantages obtained by Defendants as a result of their infringing acts, as described above. At present, the amount of such damages, gains, profits and advantages cannot be fully ascertained by Plaintiff.

21. Plaintiff is entitled to injunctive relief to prevent Defendants from engaging in further acts of infringement of the SUBJECT WORKS.

**VI.**  
**PRAYER FOR RELIEF**

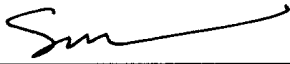
WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. That the Court find that Defendants have infringed Plaintiff's copyrights in the SUBJECT WORKS.
2. That the Court find Defendants METRIC and TCR have actively induced infringement of Plaintiff's registered copyrights in the SUBJECT WORKS.
3. That Defendants, their directors, officers, agents, servants, employees, distributors, and all other persons in active concert or privity or in participation with them, be preliminarily and permanently enjoined from directly or indirectly or by any contributory manner infringing Plaintiff's registered copyrights in the SUBJECT WORKS and from continuing to market, offer, sell, dispose of, license, transfer, display, advertise, reproduce, develop, construct, or manufacture any works derived or copied from the SUBJECT WORKS or to participate or assist in any such activity.
4. That judgment be entered for Plaintiff and against Defendants for Plaintiff's actual damages.
5. That judgment be entered for Plaintiff and against Defendants for Defendants' gains, profits, and advantages derived from their acts of infringement of Plaintiff's registered copyrights in the SUBJECT WORKS pursuant to 17 U.S.C. § 504.
6. That Plaintiff have judgment against Defendants for Plaintiff's costs and attorneys' fees pursuant to 17 U.S.C. § 505.

7. That the Court grant such other, further and different relief as the Court deems proper under the circumstances.

Respectfully submitted,

**SANKEY & LUCK, L.L.P.**

By:   
\_\_\_\_\_  
Gregory M. Luck  
State Bar No. 12666380  
600 Travis Street  
Suite 6200  
Houston, Texas 77002  
(713) 224-1007  
(713) 223-7737 (Fax)

TROP, PRUNER & HU, P.C.  
Timothy N. Trop  
State Bar No. 20236600  
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(713) 468-8883 (Fax)

ATTORNEYS FOR PLAINTIFF

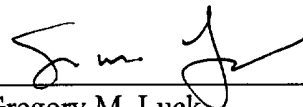
**JURY DEMAND**

Plaintiff hereby demands a trial by jury on all issues triable to a jury.

Respectfully submitted,

**SANKEY & LUCK, L.L.P.**

By:

  
\_\_\_\_\_  
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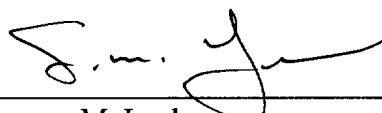
**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of PLAINTIFF'S FIRST AMENDED COMPLAINT has been served by certified mail, return receipt requested on this 26th day of September, 2001 on the following:

Metric Holdings, Ltd. Partnership  
c/o Corporation Service Company  
800 Brazos  
Austin, Texas 78701

Chiles Architects, Inc.  
Gary R. Chiles  
2901 Bee Cave Road, Box H  
Austin, Texas 78746

Trammel Crow Residential Company  
c/o Corporation Service Company  
800 Brazos  
Austin, Texas 78701

  
\_\_\_\_\_  
Gregory M. Luck